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H2B denials could shut down military buildup, judge says

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The first hearing for the H2B lawsuit was held today for a motion for preliminary injunction filed by the Guam Contractors Association.

Guam - Even a federal judge today expressed concern for the blanket denials of H2B visas in the last year, noting that it goes against the wishes of Congress when it comes to the military buildup.

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This was expressed during the first hearing for the H2B lawsuit in which local contractors are seeking reversal of those denials.

It's not that Guam doesn't have the ability to learn the construction or skilled labor trade to be able to provide the labor needed for local projects that would contribute to the economy, it really boils down to how much we can offer. That's according to Attorney Jeffrey Joseph, who argued in District Court today on behalf of the Guam Contractors Association and several local contractors suing the US Citizenship and Immigration Service.

The parties were in court Tuesday to present oral arguments on a motion for preliminary injunction being sought by GCA. The injunction would allow for the reversal of the denial of H2B petitions over the last year.

Joseph pointed out that Guam Department of Labor is tasked with certifying these petitions before they're sent to the USCIS out of California for approval. The process for certification is a rigorous one, he said; even more rigorous than that of the mainland US.

Joseph also says that the government makes the mistake of basing these petitions on the job when really, he said, it should be based on the employer's need.

Joseph pointed out that those joining the federal government understood Guam's unique position when it came to foreign labor. That in 1975, the regulation was changed for Guam's prevailing wage and a cap on the amount of foreign labor was lifted. In the US mainland there is still a cap of 66,000 foreign workers per year.

But US Magistrate Judge Joaquin Manibusan questioned Joseph on the definition of peak-load need which is the category under the H2B program that has been denied over the last year. The judge acknowledged that the H2B program was not meant to recruit foreign workers for permanent jobs, but it seems that after 30 years of approvals, Guam still hasn't been able to supplement its own workforce with local hires.

"Is that the image we want to show for Guam? That we can't have masons or carpenters? If we have been training them for the last 50 years, how do we not have workers?" asked Manibusan.

That, according to Joseph, is a telltale sign of an even bigger problem. Locals are trained for local jobs, but because other jurisdictions, like Hawaii, offer 40 percent more in wages, most of those who train on Guam end up leaving the island.

With an impending military buildup, without labor, Joseph said "we will shut down." In addition, Joseph argued that while Guam DOL acts as an advisory when it comes to certifying the H2B petitions before sending them up to USCIS in California, deference should be given to Guam. Essentially, he says, Guam should have the upper hand in determining whether the petitions are legitimate because "there's no way someone in California can understand the needs of Guam for labor. No one can understand better than Guam DOL. Not an adjudicator in California."

When it came time for the defense to present oral arguments, Attorney Glenn Girdharry acknowledged that the situation these denials have created are "unfortunate," but he also notes that GCA is asking to change the status quo.

However, even Judge Manibusan pointed out that the lack of skilled workers on Guam is "real" and that after World War II, very few large facilities were built without foreign labor. Manibusan then emphasized that it was "disturbing that Congress has said that they want to relocate Marines to Guam and we need to have certain facilities built and certain things done but if we don't have the workers, what are we gonna do?"

To that Girdharry said there is no definitive connection between the military buildup and the H2B program.

"That complaint belongs in the halls of congress" Girdharry told Manibusan.

Judge Manibusan then pointed out that Congress is also the same body that gives the USCIS the authority to approve or deny the H2B petitions.

The judge noted that the potential impact these denials could have would be far-reaching and not just limited to Guam. The parties indicated in court that they will discuss possibly reaching a settlement agreement but details were not provided.

Manibusan took the motion under advisement.

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